IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 425 of 1997
With
CRIMINAL APPEAL No. 426 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESH ALIAS RUPA MEGHA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KN PANDYA WITH AMEE YAJNIK for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 21/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.Criminal Appeal No.425 of 1997 has been filed by the appellant-original accused-Ramesh @ Rupa Megha of Sessions Case No.175 of 1996 while Criminal Appeal No.426 of 1997 has been filed by the appellant-original accused-Gautam Nathu Mena of Sessions Case No.194 of 1996 against the common judgment and order dated 9-4-1997 rendered in Sessions Cases Nos.175 of 1996 and 194 of 1996 respectively by the learned Addl. Sessions Judge, Ahmedabad City, whereby learned Judge has convicted and sentenced both the appellants-accused for the offence under Sec.302 of IPC to suffer for life and fine of Rs.6,000/-, in default, to suffer RI for 4 months and for the offence under Sec.445 of IPC to suffer for four years imprisonment and fine of Rs.2,000/-, in default, to suffer RI for 2 months. No separate sentence was awarded for the offence under Sec.135 of B.P.Act.

2.It may be noted that both the Sessions Cases

Nos.175 of 1996 and 194 of 1996 have arisen from one offence registered at Navrangpura Police Station as C.R.No.I-871 of 1995 wherein both the accused have been shown as accused for the offences punishable under Sec.302 read with Sec.34 and Sec.455 of IPC and also under Sec.135(1) of B.P.Act. The appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 was absconding and later on he was arrested by Haveli Police under Sec.41(A) of Code of Criminal Procedure on 3-6-1996 and on the same day, he was arrested in the offence in question. At the end of investigation, supplementary charge sheet was submitted on 26-6-1996 against him. Charge against him has been framed on 29-8-1996 while charge against the appellant of Criminal Appeal No.425 of 1997 has been framed on 2-8-1996. At the end of trial, learned Addl. City Sessions Judge, Ahmedabad, delivered the aforesaid judgment and order of conviction.

3.Short facts of the prosecution case are that the complainant, his brother Dipakbhai, other brothers and parents are staying in Bungalow No.B/11, Rajhans Society, Navrangpura, Ahmedabad City, in a joint family. All were having separate bed rooms in the said bungalow. During the intervening night between 16th and 17th December, 1995 at about 5.15 a.m., the complainant Jaydeepbhai Bharatbhai Kothari heard the shouts of his brother Dipakbhai's wife Dinaben and, therefore, he went towards the said bedroom of his brother on the first floor. At that time, he saw one person coming from the bedroom of his brother having knife in his hand and hence, complainant tried to catch him. During the scuffle, other persons i.e. Cook and other servants also reached there and tried to catch-hold but they could not succeed and said person was able to escape from the place. However, the knife held by him fell on the floor. Another person who was

standing very near to the bedroom door with knife in his hand went into the bathroom to save himself but he was locked from outside by the family members and servants. As he saw his elder brother lying in a pool of blood in the bedroom, he took him in a bedsheet. Meanwhile, witness Alpeshbhai informed the police over phone. In the scuffle, Sanjaybhai and Alpeshbhai received injuries. Thereafter, they took Dipakbhai in V.S.Hospital and was admitted in the emergency ward. During the course of treatment, Dipakbhai succumbed to the injuries and, therefore, complaint of Jaydeepbhai has been recorded by PI, Shri S.P.Oza and registered it as Navrangpura Police Station C.R.No.I-871 of 1995 for the offence punishable under Sec.302 read with Sec.34 of IPC. The police started investigation, prepared inquest panchnama of the dead body of Dipakbhai and also made arrangements to send the dead body for post mortem. Police also prepared panchnama of

scene of offence in presence of panchas and muddamal seized from the scene of offence was attached under panchnama and the accused who was locked in the bathroom from outside was arrested by drawing arrest panchnama in presence of panchas. Cloth and shoes wore by the accused and other things including the money were seized in presence of panchas by drawing panchnama. Thereafter, he recorded statements of various witnesses and also made arrangements to send the muddamal into FSL with forwarding letter. He collected injury certificate of injured witnesses and post mortem note as well as injury certificate of deceased. Since he was transferred on 28-12-1995, further investigation was started by PI, Mr.Gohil and on his transfer, investigation was taken over by PI, Shri M.D.Bhatt and at the end of investigation, he submitted the charge sheet in the Court of learned Metropolitan Magistrate on 12-3-1996 qua accused-Ramesh @ Rupa Megha only since

other accused Gautam Nathu Mena was absconding.

4. On 3-6-1996, accused-Gautam Nathu Mena was arrested by Haveli Police under Sec.41(A) of Cr.P.C. and he was arrested on the same day in this offence also. His test identification parade was held on 5-6-1996 at 5 O' clock by the Executive Magistrate and thereafter, he has been sent to judicial custody. Supplementary charge sheet has been submitted against him into the Court of learned Metropolitan Magistrate on 26-6-1996. Learned Metropolitan Magistrate committed the case of appellant-original accused-Ramesh @ Rupa Megha of Criminal Appeal No.425 of 1997 into the Court of Sessions at Ahmedabad City on 22-4-1996 while case of appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 has been committed on 1-8-1996 to the Court of Sessions at Ahmedabad City wherein both the cases have been numbered as Sessions Cases Nos.175 of 1996 and 194 of

1996 respectively. Learned Addl. Sessions Judge, Ahmedabad City, framed charge against the appellant-original accused-Ramesh @ Rupa Megha of Criminal Appeal No.425 of 1997 on 2-8-1996 for the offence under Secs.302 and 445 read with Sec.34 of IPC and also under Sec.135(1) of Bombay Police Act while charge against the appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 has been framed on 29-8-1996. Both the accused pleaded not guilty to the charge on respective dates and prayed to be tried.

5. As both the sessions cases arose from the same offence registered as Navrangpura Police Station C.R.No.I-871 of 1995, the parties submitted consent purshis at Ex.4 on 26-12-1996 requesting to try both the cases together and both the Sessions Cases were ordered to be tried together.

6. To prove the case against both the accused, the prosecution examined the following witnesses:

i)P.W.1, Alpeshbhai Bharatbhai Kothari, Ex.6, the injured eye witness and brother of the deceased.

ii)P.W.2, Dr.Manishbhai Bhagubhai Patel, Ex.8.

iii)P.W.3, Jaydeepbhai Bharatbhai Kothari, Ex.10, the complainant.

iv)P.W.4, Dinaben Dipakbhai Kothari, Ex.11, widow of deceased Dipakbhai.

v)P.W.5, Sanjaybhai Bharatbhai Kothari, Ex.25, brother of the deceased.

vi)P.W.6, Najir Umarji Patel, Ex.21, the panch of panchnama of scene of offence.

vii)P.W.7, Dansinh Bhurasinh Rajput, Circle Inspector, Ex.27, who prepared the map of scene of offence.

viii)P.W.8, Ranjitsinh Virsingbhai Gohil, Ex.31, the Executive Magistrate, who conducted test identification parade in presence of panchas on 5-6-1996.

ix)P.W.9, Ramanlal Valladas, Ex.36.

x)P.W.10, Dr.Rajendra Chunibhai Patel, Ex.38, who treated the injured Sanjay Bharatbhai Kothari.

xi)P.W.11, Dr.Dilip Manubhai Desai, Ex.40, who performed post mortem on the body of deceased Dipakbhai.

xii)P.W.12, Sunil Parsotam Oza, Ex.41, Police Inspector.

xiii)P.W.13, M.D.Bhatt, Ex.46, Police Inspector, who investigated the matter and submitted the charge sheet into the Court.

Prosecution also relied on various documentary evidence namely, report under Sec.157 Cr.P.C. Ex.43, telephonic verdhi given by Bharatbhai Kothari Ex.12 from V.S.Hospital, copy of vardhi Exs.13, 141, complaint Ex.42, inquest panchnama Ex.15, panchnama of scene of offence Ex.16, panchnama of search and seizure of body of accused Ramesh @ Rupa Megha Ex.37, panchnama of cloth seized from the dead body of Dipakbhai Ex.17, injury certificate of Sanjay Kothari Ex.39, injury certificate of Alpeshbhai Ex.49, post mortem note Ex.18, copy of notification issued by Commissioner of Police Ex.44, forwarding letter sent by Navarangpura Police to FSL, receipt issued by FSL along with report Exs.19 to 23, foot print photographs Ex.24, panchnama of place

of TI parade Ex.33, office copy of yadi written to Executive Magistrate Ex.35 for holding TI parade and TI parade panchnama Ex.34. On submission of closing purshis by the prosecution, learned Addl. City Sessions Judge, Ahmedabad, recorded the further statement of the accused under Sec.313 of the Code of Criminal Procedure. After hearing the learned advocates appearing for the respective parties, learned Addl. Sessions Judge, Ahmedabad City, delivered the aforesaid judgment and order of conviction and sentence which gave rise to the aforesaid appeals.

7. Both the appellants sent their written request and learned counsel, Mr.Kaushal N.Pandya is representing both the appellants. We have also requested learned counsel, Ms.Amee Yajnik, to render her services as amicus curiae and she has rendered her services by representing the case of both the appellants.

8. Heard Mr.Kaushal N.Pandya with Ms.Amee Yajnik, learned counsel for the appellants and learned APP, Mr.R.C.Kodekar, for the respondent-State.

9. During the course of arguments of these appeals before this Court, it has come to know that the appellant of Criminal Appeal No.426 of 1996 has absconded and till this date he has not surrendered nor could be arrested by the Police. As far as the appellant of Criminal Appeal No.425 of 2006 is concerned, he has been released on bail by the High Court later vide order dated 5-12-2003.

10. It is mainly contended by the learned counsel for the appellants that the appellants are innocent and have been falsely implicated in the crime in question. They have taken us through the oral evidence of four important eye witnesses along with the reasoned judgment delivered by the court below. They have raised contention about

holding of test identification (TI) parade qua appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997. According to him, TI parade was held after a period of six months and, therefore, said TI parade has no evidential value in the eye of law. Except the TI parade, there are no other evidence to connect accused-Gautam Nathu Mena with the crime in question. They have also raised the contention that all the eye witnesses are family members and close relatives of the deceased and since they are interested witnesses, their evidence should not be taken into consideration by the Court but should be discarded. It is further contended that medical evidence do not tally with the evidence given by the witnesses. In absence of evidence of any other independent witnesses connecting with the crime in question, it is prayed that it is a fit case wherein the appellants are required to be acquitted.

11. Learned APP, Mr.Kodekar, has contended that it is a well reasoned judgment delivered by the court below on the basis of evidence on record. He has also taken us through the oral evidence of four important eye witnesses along with the relevant discussion made in the judgment. He has also taken us through the evidence of panchnama of test identification parade, evidence of panchas and doctors who have treated the injured and the doctor who performed post mortem on the dead body of the deceased and contended that incident in question has taken place at night in the bungalow of the joint family of all the brothers of the deceased. As the incident has taken place during night hours, usually presence of all the witnesses would be quite natural. Moreover, nothing adverse has come out from their cross examination which turtle their evidence. It is further contended that the appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 has

been caught-hold on the spot along with deadly weapons and he has been locked in the bathroom and he was arrested after preparing search and seizure panchnama. Taking us through the panchnama of scene of offence, it is contended that even at the time of preparing panchnama of alleged scene of offence, FSL expert has been called and various foot print photographs and other scientific evidence were collected on the spot and FSL opinion is in favour of prosecution. It is also contended that it is a heinous crime wherein appellants have involved themselves wherein young man aged about 44 has been killed and two persons have been injured. The intention and motive of the appellants-accused were to commit robbery with murder. Since the prosecution is able to prove the case beyond reasonable doubt, he has sought to dismiss the appeal.

12. We have also gone through the evidence shown to us by the learned counsel for the

respective parties more particularly the evidence of four eye witnesses namely, P.W.1, Alpeshbhai Bharatbhai Kothari, Ex.6, the injured eye witness and brother of the deceased; P.W.3, Jaydeepbhai Bharatbhai Kothari, Ex.10, the complainant in this case; P.W.4, Dinaben Dipakbhai Kothari, Ex.11, widow of deceased Dipakbhai and P.W.5, Sanjaybhai Bharatbhai Kothari, Ex.25, brother of the deceased.

13. It is required to be noted that out of the above four witnesses, two witnesses namely, P.W.1, Alpeshbhai Bharatbhai Kothari, Ex.6 and P.W.5, Sanjaybhai Bharatbhai Kothari, Ex.25 have received injuries in the scuffle including fracture on the right hand wrist of witness Sanjay. The injuries received by eye witness Sanjay has been proved through the evidence of P.W.10, Dr.Rajendra Chunibhai Patel, Ex.38, who has examined and treated him and also through the injury certificate Ex.39. Simultaneously, injuries received by

Alpesh Bharatabhai Kothari has been proved through the evidence of Dr.Manishbhai Bhagubhai Patel, P.W.2, Ex.8, who examined and treated him and through the injury certificate Ex.9. Presence of these witnesses has been proved by the prosecution through the evidence of independent and scientific evidence also. It is established from the evidence on record that family members of the deceased including brothers are staying together in 11-B Rajhans Society, Navrangpura, Ahmedabad, in a joint family having separate bed rooms. It is also established from the evidence on record that on the day of incident, their parents have gone to Sankheshwara for performing religious ceremonies and above referred four witnesses and deceased were only at home. The incident has been taken place in the intervening night at 5 or 5.15 a.m. between 16th and 17th December, 1995 and therefore, usually presence of family members will be at home

unless otherwise proved. In these circumstances, presence of the family members at home normally cannot be discarded. Here in this case, their presence has been established beyond reasonable doubt even by way of medical evidence of doctors as stated hereinabove. Merely because they are wife and brothers of the deceased staying together in one bungalow, they cannot be branded as interested witnesses and their evidence cannot be discarded on that ground. It has been proved by way of scientific evidence also that they were there at the relevant time and when the incident has been taken place at night in the bed room of the bungalow of the deceased, one may not expect presence of any other independent witness at the relevant time.

14. Reliance is placed on a decision of the Supreme Court in **2003 Supreme Court Cases (Cri) 23** in the case of Saradul Singh Vs. State of Haryana wherein it has been held at

head notes A and B as under:

> "A.Criminal Trial—Appreciation of evidence—Generally-Duty of courts—Held, is to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution—Courts must undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to broad and reasonable probabilities of the case.
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> B. Criminal Trial—Witnesses-Interested witness-Testimony of—Reliability—Evidence of interested witnesses should be scrutinised more carefully to find out if it has a ring of truth—If the same is found acceptable and seems to inspire confidence in the mind of the court, held, it cannot be discarded totally merely on the ground of certain variations or infirmities or additions and embellishments, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core."

15. In these circumstances, what is required to be done by this Court is to evaluate minutely the evidence of the witnesses and if the same is found to be acceptable and inspires

confidence in the mind of the court, it cannot be discarded.

16. We have evaluated minutely the evidence on record of above four eye witnesses, two of whom are injured witnesses, and we are fully satisfied that they are witnesses of incident and their evidence is inspiring confidence. Moreover, nothing contrary has come out from their cross examination so as to weaken or impair their evidence.

17. We are therefore of the opinion that prosecution is able to prove the case against the appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 beyond reasonable doubt that on the day of the incident both the accused have entered into the bedroom of the bungalow of the deceased Dipakbhai and Dipakbhai was assaulted causing him ten serious injuries on vital parts of the body of the deceased and obviously, as it was night time, presence of wife in the bed room along with his husband

is quite natural. It is also natural that one would shout for help and when she shouted, brothers of the deceased reached in the bedroom and they were followed by their servants and they saw two persons with knives in their hands. They could catch-hold one of the accused namely Ramesh @ Rupa Megha, who was standing very near to the bed room in the drawing on the first floor. He could be overpowered as he entered into the bathroom to save himself and when he entered into the bathroom, it was locked from outside and ultimately he was handed over to the police. However, other accused-Gautam Nathu Mena could not be overpowered but he was able to escape. While escaping, knife fell from his hand on the drawing room of the first floor. Simultaneously, victim was taken to VS Hospital wherein during the course of treatment, he succumbed to the injuries. At the earliest, complainant Jaydeepbhai Bharatbhai Kothari has filed the complaint

with Navrangapura Police Station narrating the incident and same has been deposed by him before the Court also. Not only that, police came on the spot and accused who was locked in the bathroom from outside was brought out and panchnama of his person was drawn. Since request has been made to FSL to keep the expert present on the spot, FSL expert also remained present with Ambulance. They also took interest in drawing panchnama and as per their suggestion, certain muddmals were seized more particularly shoes and clothes wore by the accused at the time of incident and he was arrested with the money in his possession. Even photographs of foot prints of the accused were also taken and same were sent to FSL and it has been proved by the prosecution by way of Ex.19 which is the written request made by prosecution to FSL expert. Not only that, the weapons seized on the spot along with a sharp edged blade has been seized. All the muddamals have been sent

to FSL with forwarding letter. On examination, FSL has given opinion which forms part of record as Exs.19 to 23. Photographs of foot print Ex.24 also corroborate the say of the prosecution because human blood of the groups 'B' and 'O' has been found from the above referred muddamal and also from the cloth and shoes wore by the accused. Not only that, blood has been found on the knife and sharp edged blade further corroborating the say of the prosecution. Apart from that, there are ten injuries on the vital parts of the body of the deceased as per column No.17 of the post mortem note Ex.41 and cause of death has been stated to be shock as a result of haemorrhage following the stab injuries sustained. This has been proved through the evidence of Dr.Dilip Manubhai Desai, Ex.40, who performed post mortem on the body of deceased Dipakbhai. Even doctor has opined that injuries sustained by the victim can be

caused by muddamal article knife and sharp edged blade.

18. It is required to be kept in mind that appellant-original accused-Ramesh @ Rupa Megha of Criminal Appeal No.425 of 1997 has been arrested on the spot along with muddamals and, therefore, learned counsel did not argue much qua him.

19. As far as appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 is concerned, a doubt has been raised by the learned counsel for the appellants regarding the test identification parade by contending that since it has been held after six months, no evidential value can be attached to it. In this connection, we may say that he was absconding till he was arrested on 3-6-1996 and at the earliest opportunity on 5-6-1996 test identification parade was held. The accused remained absconding for six months and immediately after his arrest, TI parade was held and, therefore, it does not lie in

the mouth of the learned counsel for the appellants to content that there is a delay in holding test identification parade. On the contrary, no breach has been committed in holding the test identification parade and we hold that it has been held after taking all necessary care by the Executive Magistrate. Even in the statements of all the eye witnesses including the complainant, the description of the appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 has been given as a tall man. In these circumstances, it cannot be said that the witnesses had no opportunity to see him because when they entered into the room, scuffle had been taken place and injury has been received by some of them in the scuffle and, therefore, they had enough opportunity to see him. As the description has been given well in advance at the earliest, it cannot be said that he has been falsely involved. Over and above, it is not his case that prior to

holding of test identification parade, they had an opportunity to see him. Moreover, nothing has been coming forth from the evidence of Executive Magistrate so as to weaken his evidence. Apart from that, panchnama of test identification has been properly proved. We are therefore of the opinion that case against the appellant-original accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 has also been proved beyond reasonable doubt.

20. Thus we hold that case against the appellants-accused has been proved by the prosecution beyond reasonable doubt and hence, the judgment and order of conviction and sentence delivered by the court below is just and proper and no illegality has been committed by the learned Addl. City Sessions Judge requiring interference by this Court. Hence, both these appeals are required to be dismissed.

21. Both the appeals are hereby dismissed.

Appellant-accused-Ramesh @ Rupa Megha of Criminal Appeal No.425 of 1997 is on bail and hence, his bail bond shall stand cancelled. He is directed to surrender before the Jail Authorities within fifteen days from today.

Appellant-accused-Gautam Nathu Mena of Criminal Appeal No.426 of 1997 is absconding and hence, concerned Jail Authorities are directed to take necessary steps forthwith for procuring his custody.

18. Office shall place a copy of this judgment in each appeal.

(R.P.DHOLAKIA,J.)

(M.D.SHAH,J.)

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